

CITY OF SAN JOSÉ, CALIFORNIA Department of Planning, Building and Code Enforcement 801 North First Street, Room 400 San José, California 95110-1795		Hearing Date/Agenda Number P.C. 08/11/2004 Item:								
<h1 style="margin: 0;">STAFF REPORT</h1>		File Number CP 04-047								
		Application Type Conditional Use Permit								
		Council District 4								
		Planning Area Berryessa								
		Assessor's Parcel Number(s) 586-01-015								
PROJECT DESCRIPTION Completed by: Mike Mena										
Location: Between Berryessa Creek and West Minister Court.										
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FILE HISTORY Completed by: MM										
Annexation Title: Piedmont No. 8 Date: June 7, 1963										
PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION										
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OWNER	APPLICANT/DEVELOPER	CONTACT								
San Jose Water Works 374 W. Santa Clara Street San Jose, CA 95113	Kersten Rutherford/ Metro PCS 1080 Marina Village Parkway Alameda, CA 94501	Jennifer Estes/ Peacock Associates 5855 Doyle Drive, Suite 108 Emeryville, CA 94608								

Department of Public Works

See Attached.

Other Departments and Agencies

See attached memorandum from the City of San José Fire Department

GENERAL CORRESPONDENCE

None received.

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The applicant, Metro PCS, is requesting a Conditional Use Permit to install a new 60-foot tall wireless communications antenna and an associated 150 square foot equipment enclosure, on a site currently being used as a corporation/utility yard by San Jose Water Works in the R-1-8 Single Family Residence Zoning District. The Zoning Ordinance requires a Conditional Use Permit for installation of a wireless communication antennae in all R-1 Residence zoning districts.

The wireless communication antenna and associated equipment enclosure would be located at the interior of the site and located behind and partially screened by an existing 16-foot tall water tank from Cropley Road. The site is accessed by an easement from Cropley Road and is directly adjacent to existing single family residences to the west and east of the site. Berryessa Creek separates the project site from single-family residences to the south. There is an existing 27-foot tall communications antenna on the subject site which will be removed. A Conditional Use Permit for a 35-foot tall monopole (CP00-054) was previously approved in December of 2000 but was never built, hence the permit is no longer valid.

ENVIRONMENTAL REVIEW

Under the provisions of Section 15303 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) as stated below, this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, in that the project only consists of the construction and installation of a single slim-line monopole (24 inches in diameter) within a new 200 square foot equipment enclosure and is within the maximum allowable in the R-1-8 Single Family Residence District.

GENERAL PLAN CONFORMANCE

The proposed use is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of Public/ Quasi-Public in that wireless communication antennas/monopoles developed in conformance with the Zoning Ordinance and applicable City policy are deemed to be a Public/Quasi-Public use.

ANALYSIS

The primary issue analyzed for the proposed project is conformance with the following regulations and policies: 1) Zoning, and 2) City Council Policy 6-20 for Wireless Communication Facilities.

Conformance to the Zoning Regulations

The R-1-8 Single Family Detached Residence Zoning District typically has a maximum height of thirty-five feet. However, Section 20.80.1900 allows an exception to the zoning district height for a wireless communication antenna up to 60 feet provided the antenna is a “slim” pole design. The intent is to minimize the visual impact of the pole. The proposed 60-foot monopole is of a “slim” pole design and will be painted to blend with other existing structures on the subject site.

Conformance to City Council Policy 6-20 for Wireless Communications Facilities

The policy states that freestanding monopoles should not be implemented where building mounted or collocation facilities are feasible and would reduce visual impacts. The policy requires that an alternative analysis be prepared that addresses the potential for collocation on an existing monopole or mounting the antenna on an existing building. The alternative analysis for this proposal included analysis of collocation on existing monopoles within one-quarter mile of the subject site and potential to locate as a building mounted antenna in the vicinity of the project site. The analysis concluded that there were no monopoles within one-quarter mile of the site with exception to the previously approved pole on site. Also, the analysis for locating as a building mounted antenna was not feasible due to the fact that the area is predominantly residential with the exception of the Morrill Middle School, which was not interested in providing for the proposed antenna. Therefore, the applicant is proposing to replace the existing monopole on site with a new monopole, which would provide for future collocation opportunities.

As part of its criteria for siting Wireless Communication Antennas, *the Land Use Policy for Wireless Communication Facilities* requires that new freestanding monopoles should be located no closer than 35 feet from any property with a residential use or one foot for every foot in height of the proposed structure. The applicant's proposal is consistent with the Council Policy in that the proposed 60-foot monopole would be located in excess of 60-feet from the adjacent residential uses.

The Council Policy also requires new wireless antennas to be located as to minimize visual impacts and to be architecturally integrated into the existing structure(s). It also requires ancillary equipment to be screened. Consistent with the Council Policy, the proposed project includes numerous measures that provide visual screening for the proposed antenna. The antenna itself would have a slim profile, only 24 inches in diameter and would be painted in colors to match the existing and adjacent mechanical equipment and 16-foot tall water tank. The proposed antenna would be located within a new equipment enclosure at the interior of the property and will be partially screened by the existing water tank and a line of trees from the public right-of-way and residences in the area.

Conclusion

The proposed project meet all required zoning regulation for placement of a wireless communication antenna in the R-1-8 Residence zoning district and is consisted with the City Council Policy for wireless installations. Given the above, staff does not believe the proposed wireless communication antenna, as conditioned by this permit, will have a negative impact on the surrounding community.

PUBLIC OUTREACH

Notices of a public hearing were distributed to the owners and tenants of all properties located within 500 feet of the project site and posted on the City web site. Staff has been available to discuss the project with members of the public.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Public/ Quasi-Public on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the R-1-8 Single Family Residence Zoning District.
3. Under the provisions of Section 15303 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) as stated below, this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.
4. The project proposes permitting of a 60-foot tall wireless communications antenna adjacent to an existing 16-foot tall water tank.
5. The wireless communications antenna is located in excess of 60 feet horizontally from adjacent single-family residences.
6. The new 60-foot tall wireless communications antenna will be painted to match the existing water tank.
7. The existing 27-foot tall wireless communications antenna on site is to be removed.
8. The proposed project will not eliminate required parking.
9. The subject Zoning District has a height limit of 35 feet.

10. The City Council Land Use Policy for Wireless Communications Facilities is applicable to this application.
11. An alternatives analysis concluded that the subject location is the most feasible site to locate and provide for collocation opportunities with other cellular carriers.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram designation and relevant urban design policies.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The proposed project substantially complies with the applicable criteria of the City Council Land Use Policy for Wireless Communications Facilities.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and

subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "Metro-PCS Cropley Pump Station" dated April 22, 2004, and last revised on July 02, 2004, on file with the Department of City Planning and Building and to the San José Building Code (San José Municipal Code, Title 24).
2. **Nuisance.** This use shall be operated in a manner, which does not create a public or private nuisance. The applicant must abate any such nuisance immediately upon notice by the City.
3. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. and 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
4. **Lighting.** This permit allows no new on-site lighting.
5. **Tree Removals.** No tree larger than 56 inches in circumference, at a height 24 inches above the natural grade slope, may be removed without a Tree Removal Permit issued by the Director of Planning.
6. **Utilities.** All new on-site telephone and electrical service facilities shall be placed underground.
7. **Generators.** This permit does not approve any emergency/back-up generators on site. Any proposed emergency/back-up generators will require Planning approval.
8. **Colors and Materials.** All wireless communications antennas and screening colors and materials are

to be those specified on the approved plan set and shall match the existing structure.

9. **Public Works Clearance.** Prior to the issuance of Building Permits, the applicant shall obtain from the Public Works Department, Room 308, (408) 277-5161, the following requirements (3-99999) to the satisfaction of the Director of Public Works:
- a. *Flood: Zone AO, Depth 1'*
Equipment must be elevated at or above the base flood elevation or protected from flood damage.
 - 1) Submit details showing the height of the proposed concrete pad and equipment cabinets at the building permit stage.
 - 2) An Elevation Certificate (FEMA Form 81-31) for equipment cabinets, based on construction drawings, is required prior to issuance of a building permit. Consequently, an Elevation Certificate for the building equipment cabinets, based on finished construction is required prior to issuance of a Building permit.
 - 3) If the equipment cabinets are to be floodproofed, a Floodproofing Certificate (FEMA Form 81-65) and floodproofing details are required prior to the issuance of a Public Works Clearance.
10. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
- a. *Construction Plans.* This permit file number, CP04-047, shall be printed on all construction plans submitted to the Building Division.
 - b. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
 - c. *Archaeology.* Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.
11. **Anti-Graffiti.** The applicant shall remove all graffiti from structures and fence surfaces within 48 hours of defacement.
12. **Equipment Removal.** The applicant shall remove the wireless communications antennas and associated equipment enclosure from the site at such time as the equipment is no longer in use.

13. **Collocation.** The applicant and wireless communication facility operator shall facilitate the future collocation of wireless communication antennas on this tower. The applicant and wireless communication facility operator shall notify the Director of Planning of any proposals by other wireless communication providers to collocate antennas on this tower. The notification shall occur within 30 days of receipt of the proposal, and shall include the file number of this Permit.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.